

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N.J.

BULLETIN 313

MAY 2, 1939.

1. MORAL TURPITUDE - WHAT CONSTITUTES - CONVENTIONALIZED SO FAR AS BOOTLEGGING IS CONCERNED - HEREBIN A FURTHER STEP TOWARD THE EXTERMINATION OF THE BOOTLEGGER.

In the Matter of Eligibility :
for Employment. : CONCLUSIONS

Case No. 267.

Mario M. Polcari, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Notice was served upon respondent, who was found working on certain retail liquor premises in this State, to show cause why he should not be declared disqualified from being employed by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude. R.S. 33:1-25,26.

In 1923, respondent was convicted of possessing and selling liquor at a speakeasy in violation of the Volstead Act, and sentenced to thirty days' imprisonment. However, possession and sale of liquor during the Prohibition era, even though in the conduct of a speakeasy, does not, in the absence of aggravating circumstances, involve the element of moral turpitude. Re Case No. 64, Bulletin 196, Item 10; Re Case No. 234, Bulletin 277, Item 2; Re Case No. 235, Bulletin 277, Item 7. Since no aggravating circumstances appear in the present instance, respondent's crime did not involve that element.

In 1936, respondent was convicted of conspiracy to violate the Federal Internal Revenue laws by operating an illicit still in New York State during 1934. He was sentenced to jail for a term of a year and a day, but operation of the sentence was suspended and he was released on probation for two years.

Respondent, while admitting this conviction, denies that he committed the crime. However, the conviction cannot here be collaterally attacked as unwarranted on the facts. Being rendered in a proper forum, it is conclusive against him on the issue of his guilt. Re Case No. 236, Bulletin 279, Item 2; Re Case No. 239, Bulletin 305, Item 9.

Departmental investigation discloses that, as to the facts of the crime, respondent and two other men were the principals in the operation of an illicit still, which - judging from respondent's purchase on one occasion of 100 bags of brown sugar for use therein - was conducted on a substantial scale. The Federal attorney who prosecuted the criminal case stated that the only reason why respondent's jail sentence was suspended was that the Judge felt sorry for one of the other three principals, who was an old and broken man.

Tolerance of, or excuse for, the bootlegger died with the passing of Prohibition. In these days of Repeal, he is a sinister and ugly threat against the carefully organized licensing

New Jersey State Library

system by which the government seeks intelligently to permit, and sanely to control, the liquor traffic. The Alcoholic Beverage Control Law does not contemplate that such a person is worthy of a liquor license.

As I said in Orofino vs. Millburn, Bulletin 45, Item 15:

"It may, perhaps, be forcibly argued that during the period of prohibition, many otherwise law-abiding persons directly or indirectly violated the law or condoned the practices and hence it is unfair to cast the stone of disapproval and condemn the applicant as unworthy of a license. But this argument, if sound, cannot fairly be made today, when it is possible to engage in the liquor industry pursuant to law."

In Re Apicella, Bulletin 134, Item 3, it was declared:

"A person convicted for having participated in the operation of an illicit still since Repeal is not the sort of person qualified to enjoy the privileges of a license."

In Re P. & P. Transportation Co., Bulletin 201, Item 3, I revoked outright the license of a transporter for delivering denatured alcohol to a consignee at an illicit distillery, knowing or having reason to believe that the alcohol was to be used there for illegal purposes.

In Re Siess, Bulletin 252, Item 7, I similarly revoked the license of a retailer connected with bootlegging, and stated:

"The era of the tolerated bootlegger passed out of this State with Repeal. Licensees who now dabble in bootlegging, either on their own or as auxiliaries to others, are a dangerous menace to the alcoholic beverage industry. They stamp themselves as unfit to engage in that business and must be eliminated."

In Re Case No. 251, Bulletin 303, Item 10, I denied an ARC permit to an applicant, who had pleaded guilty to such illegal activity since Repeal.

In Re Case No. 46, Bulletin 168, Item 7, it was ruled that conspiracy to violate the National Prohibition Act on a grand scale involving bribery of public officials was good cause to deny a application for a solicitor's permit even though the offense occurred prior to the advent of Repeal. The aggravating circumstances, hereinabove first mentioned, were supplied by the facts recited.

Whether the presence of so-called aggravating circumstances during the Prohibition era or activity in illicit liquor since Repeal constitutes moral turpitude is admittedly debatable. It is clear, however, that anyone who has committed either offense is unfit to hold a liquor license or be employed by a liquor licensee. Since such offense is sufficient to warrant revocation of an existing license or permit, it should be enough to justify the refusal to issue a new license or permit. The avowed object of the Control Act was to exterminate the bootlegger and racketeer. The Act is to be liberally construed to effect its objectives.

The public interest in this salutary result impels me, therefore, to hold hereby that the commission of either of such offenses involves moral turpitude within the meaning of the Alcoholic Beverage Control Act. Pursuant to the powers conferred upon the State Commissioner to make special rulings, I so rule.

Accordingly, it is hereby declared that respondent is disqualified from holding a liquor license or being employed by a liquor licensee in this State.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 25, 1939.

2. RETAIL LICENSEES - TRANSPORTATION - RETAIL LICENSEES MAY, IF THEY CHOOSE, EMPLOY TRANSPORTATION LICENSEES TO DELIVER ALCOHOLIC BEVERAGES INSTEAD OF MAKING THEIR OWN DELIVERIES.

April 24, 1939

M. Lehmann, Inc.,
Morristown, N. J.

Gentlemen:

It is permissible for a New Jersey retail licensee to make deliveries of alcoholic beverages to consumers within the State through the medium of trucking and transportation agencies who hold New Jersey transportation licenses.

The law expressly affords licensees the privilege of delivering alcoholic beverages in their own vehicles, provided such delivery is in connection with their own businesses. R.S. 33:1-28 (Control Act, Sec. 25). But the privilege therein conferred is not exclusive or prohibitive of any other means of delivery otherwise permissible under the Act. The holders of transportation licenses are entitled, subject to rules and regulations, to transport alcoholic beverages into, out of, through and within the State. R. S. 33:1-13 (Control Act, Sec. 14). This includes the transportation of liquors sold by New Jersey retailers to New Jersey consumers.

You may, therefore, employ the Railway Express or any other licensed transporter to deliver within the State alcoholic beverages sold by you to consumers.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By entering this plea in ample time before the day fixed for the hearing, the Department has been saved the time and expense of proving its case. In conformity with the practice established in Re Polonsky and Kiewe, Bulletin 303, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 25th day of April, 1939, ORDERED, that Plenary Retail Consumption License C-143, heretofore issued to Vasco Canzanese by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of five (5) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - BEAM v. CALDWELL - ORDER TO SHOW CAUSE WHETHER CONCLUSIONS (BULLETIN 309, ITEM 7) SHOULD BE VACATED OR MODIFIED.

ALBERT J. BEAM,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	ORDER
)	
THE MAYOR AND BOROUGH COUNCIL)	
OF THE BOROUGH OF CALDWELL,)	
)	
Respondent)	
-----))	

This matter being presented to the Commissioner by Nathan A. Whitfield, Esq., Attorney for appellant, Albert J. Beam, on application for reconsideration of the Conclusions and Order dated April 5, 1939 which resulted in the suspension of appellant's license for a period of ninety (90) days; and it appearing from a verified petition which has been filed on behalf of the appellant that his place of business has been closed since April 8, 1939 and that continuation of the suspension will entail bankruptcy proceedings and irreparable loss to the appellant; and it being alleged therein that the original action of respondent was caused by bias and prejudice and that additional evidence, described therein, and based in part upon facts occurring after the Commissioner's Conclusions and Order were rendered, is available to support such charge; and the Commissioner being satisfied that sufficient cause has been shown for the granting of the appellant's prayers that a further hearing be held and that the suspension of appellant's license be stayed in the meantime,

It is, on this 25th day of April, 1939,

ORDERED that a hearing be held at the offices of the Department, 744 Broad Street, Newark, New Jersey, on Monday, the 1st day of May, 1939, at 10:30 o'clock in the forenoon (Daylight Saving Time), to determine whether the Conclusions and Order of the Commissioner in the above entitled matter, dated April 5, 1939, should be vacated or in anywise modified; and it is further

ORDERED that pending such hearing and until further order of the Commissioner, the suspension of appellant's license C-5, for

premises located at 455 Bloomfield Avenue, Caldwell, New Jersey, be and hereby is stayed; and it is further

ORDERED that the Borough Clerk of respondent deliver forthwith to the appellant license certificate C-5, issued to appellant for the aforementioned premises; and it is further

ORDERED that copies of this order and the verified petition upon which it is based be served upon the respondent within one (1) day from the date hereof.

D. FREDERICK BURNETT,
Commissioner.

6. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 25, 1939

Re: Case No.268

In 1936 applicant was indicted for carnal abuse, pleaded non vult, was placed on probation for five years and ordered to pay fifty cents a week and support the child involved. At the hearing applicant testified that the charge of carnal abuse was based on the fact that he had had intercourse with a girl who subsequently gave birth to a child; that the girl was in fact under sixteen but appeared to be older; that applicant was a married man when the crime was committed. I believe that, under the circumstances set forth above, the crime of carnal abuse involves moral turpitude.

It is recommended that applicant be advised that he is not eligible to be employed by a liquor licensee.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

7. MUNICIPAL REGULATIONS - HOURS OF SALE - DAYLIGHT SAVING TIME - WHERE MUNICIPAL REGULATION SPECIFIES NO STANDARD OF TIME, THE OFFICIAL TIME FOR THE MUNICIPALITY WILL CONTROL - DAYLIGHT SAVING TIME, TO BE OFFICIAL, MUST BE ADOPTED AS SUCH BY RESOLUTION OR ORDINANCE OF THE MUNICIPAL GOVERNING BODY - UNLESS DAYLIGHT SAVING TIME IS ADOPTED AS THE OFFICIAL TIME, THE HOURS WILL BE STANDARD TIME THE YEAR ROUND.

April 26, 1939

Charles J. Monks,
Chief of Police,
Passaic, N. J.

My dear Chief:

If a municipality adopts Daylight Saving Time by resolution or ordinance of its governing body, as the official time for the municipality, it thereby converts the local hours during which sales of alcoholic beverages are prohibited or licensed premises are required to be closed, from Eastern Standard to Daylight Saving Time during the Daylight Saving period. Re Tanier, Bulletin 261, Item 1; Re Lane, Bulletin 261, Item 2; Re Wieser, Bulletin 287, Item 17.

Heretofore Daylight Saving Time has not been adopted by your Board of Commissioners as the official time for the municipality, and hence I am writing today to Mr. Bolton, the City Clerk, as per copy enclosed.

Unless, as suggested in my letter to Mr. Bolton, Daylight Saving Time is adopted as the official time for the municipality, or the alcoholic beverage resolution is expressly amended, the hours in the resolution will be Standard Time the year round.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

April 26, 1939

Arthur D. Bolton, City Clerk,
Passaic, New Jersey.

My dear Mr. Bolton:

I have inquiry from Chief of Police Monks, regarding Daylight Saving Time, and am writing today to the Chief as per copy enclosed.

The hours during which sales of alcoholic beverages are prohibited and premises are required to be closed in Passaic are established by resolution adopted by the Board of Commissioners on November 23, 1937, which reads:

"That all licensed premises shall only be open for business during the following hours and no alcoholic beverages shall be sold, given away or consumed on any licensed premises except during hours hereinafter set forth:

"On Mondays, Tuesdays, Wednesdays, Thursdays, Fridays and Saturdays, from 6 o'clock A.M. to 3 A.M. on the following day.

"On Sundays, from 1 o'clock P.M. to 3 o'clock A.M. on the following day."

The resolution of November 23, 1937 specifies no standard of time, either Eastern Standard or Daylight Saving. In such case, the official time for the municipality will govern. Re Tanier, Bulletin 261, Item 1. But in order to constitute Daylight Saving Time the official time for the municipality, it must be adopted as such by resolution or ordinance of the municipal governing body. Re Lane, Bulletin 261, Item 2; Re Wieser, Bulletin 287, Item 17.

A resolution pertaining to Daylight Saving Time, adopted by the Board of Commissioners on April 12, 1938, provides:

"BE IT RESOLVED, That at Two O'Clock A.M. on the last Sunday in April in the year Nineteen Hundred and thirty-eight (1938) the Standard Time throughout the City of Passaic shall be advanced one hour in all departments of the Municipality over which the Board of Commissioners has jurisdiction, except where the time is fixed by statute, in which case the time shall be Standard Time fixed by said statute; and at Two O'Clock A.M. on the last Sunday in September in the year Nineteen Hundred and Thirty-eight (1938) said time shall be retarded one hour." (Italics mine).

I take it that the same general form will be used in the resolution for this year.

Such Daylight Saving resolution applies by its express terms only to the extent italicized and, therefore, however effective it may have been to make Daylight Saving Time the official time for municipal departments (which I presume means Board meetings or the time when municipal employees are expected to be at their desks, etc.), does nothing to change the time in the liquor resolution or to make Daylight Saving Time, during any period of the year, the official time for the whole community. In the absence of a resolution or ordinance having this effect, the hours in the resolution of November 23, 1937 are Standard Time throughout the year, regardless of whether or not it is the custom of the residents of the City to change.

If it is the thought of the Board that hours of sale and closing shall be in accordance with Daylight Saving Time, there are two alternatives: (1) You may adopt a resolution or ordinance making Daylight Saving Time the official time for the municipality from the last Sunday in April until the last Sunday in September, or (2) you may supplement the resolution of November 23, 1937 with an additional paragraph reading:

"The hours hereinabove referred to shall be Eastern Standard Time, except from the last Sunday in April until the last Sunday in September when they shall be Eastern Daylight Saving Time."

Either will suffice to convert the time in the liquor resolution.

As the change of time is now imminent, I commend this to the Board for its immediate action. Kindly send me certified copy of such resolution or ordinance as the Board adopts, for my records.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - PROPER TREATMENT OF SO-CALLED TECHNICAL OFFENSES - THE RIDGEFIELD PARK PRECEDENT.

April 26, 1939

Elwood G. Hoyt
Village Clerk
Ridgefield Park, N. J.

My dear Mr. Hoyt:

I have before me staff report and your letter of April 12th re disciplinary proceedings conducted by the Board of Commissioners against Otto A. Ourfalian, 107 Highland Place, charged with possession of chilled beer on premises licensed under a limited retail distribution license, and possession of a quantity of home-made annisette, and note that his license was suspended for ten days.

No opinion on the merits is expressed, but I wish, nevertheless, that you would convey to the members of the Board of Commissioners my appreciation for the appropriate penalty imposed and particularly for the frank and fair memorandum* embodying their reasons. Much is gained when governing bodies put their reasons down in these disciplinary proceedings in black and white. A greater stride is made when the reasons and the result, as in the instant case, command the respect of one's fellow citizens. It is all too true that great oaks of lawlessness grow from the little acorns of so-called "technical" offenses. Your Board's treatment thereof is heartening to the cause of sound law enforcement.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

* The text of the memorandum reads:

"The licensee, Otto A. Ourfalian, is charged with violation of Rule 21 of State Regulations #20, which in substance prohibits possession of any chilled alcoholic beverages on the licensed premises of a retail distribution licensee, as well as the violation of Revised Statutes of New Jersey, Section 33:1-50, in that he possessed illicit alcoholic beverages.

The licensee was directed to show cause on March 14th, 1939, why his license should not be suspended

or revoked because of the alleged violations and at the aforesaid time a hearing was conducted by this Board, at which it was satisfactorily established that the afore-mentioned violations did occur.

It was also apparent and it conclusively appears that the violations were not the result of any intention on the part of the licensee to violate the law or the Commissioner's regulations, but were due to his ignorance of the same.

This cannot excuse or justify the violations, but may be considered in connection with other facts and circumstances in mitigation of the penalties to which the licensee is subject because of the violations.

The licensee is a naturalized American citizen, who has maintained a combination grocery and delicatessen store in the Village of Ridgefield Park for many years. He resides in the licensed premises with his wife and one child. His reputation in the community is excellent and he has never been in any trouble of any sort. His place of business is located in a residential section of the Village and is patronized by householders in that area. It would appear that the sale of malt alcoholic beverages constitutes a very small part of his business and is intended as a convenience for his patrons.

We feel satisfied that the possession in the premises of annisette, which appears to be a distilled alcoholic beverage, was in nowise connected with his business and was never intended to be sold to customers, nor did the licensee know that possession of the same was unlawful.

The Department of Alcoholic Beverage Control of the State of New Jersey, and the Commissioner thereof, have in the past and now are bending every effort to the proper regulation of the law pertaining to alcoholic beverages of every nature and it is essential that they receive every co-operation from the municipal authorities. While the offense of the licensee in the present case standing alone may appear to be innocuous and warrant no disciplinary measures, the fact remains that from small violations, larger ones may grow, particularly if the former go unnoticed or without penalty of any sort.

In accordance with the law and in co-operation with the efforts being made by the Commissioner of Alcoholic Beverage Control, it becomes necessary and this Board does hereby determine that the licensee herein is guilty of the offense charged and his retail distribution license is suspended for a period of ten (10) days, commencing Saturday, April 15th, 1939.

Dated: April 6th, 1939

H. I. LOWE

Mayor

GEORGE F. MALLEY

Commissioner

GEORGE F. WAGNER

Commissioner

Certified true copy of the above.

ELWOOD G. HOYT

Village Clerk 11

9. LEGISLATION - SALES FOR CASH - ASSEMBLY BILL NO. 346 - REPORT TO ASSEMBLY COMMITTEE AFTER PUBLIC HEARING.

April 29, 1939.

Alcoholic Beverage Control Committee,
House of Assembly,
State House,
Trenton, N. J.

Gentlemen:

Pursuant to your request, I attended the hearing on Assembly Bill 346, and listened attentively to the presentation of both sides and now report:

The bill prohibits breweries, state beverage distributors and wholesalers from selling malt alcoholic beverages to retailers in this State except for cash. Manufacturers, however, may still extend usual and customary credit to customers who live or maintain places of business outside of the State when the beverages so sold are actually delivered to such outside points.

It also provides that existing indebtedness for beverages heretofore sold and delivered within the State shall, without regard to prior credit arrangements, be amortized in minimum monthly installments of 5%; that on failure of any licensee to pay such installment, the creditor is required to commence an action in the courts for the recovery of the entire amount due at the time of such default; that failure to commence or diligently to prosecute such action bars recovery of the amount due; that upon entry of a judgment, installment payments of 5% of its amount shall be made in the same manner as provided for payment of the original indebtedness; that a thirty day default in any required payment is ground for revocation of license.

The most that can be said for the bill is the claim that it will prevent a retailer from becoming so heavily indebted to the brewer, wholesaler or distributor, that he is virtually under their control and thereby eliminate excessive credit and with it the so-called "tied house".

The granting of excessive credit is a trade mistake. But that is no reason why the Government should constitute itself a collection agency for private purposes. There is no social problem involved in a credit measure of this kind. If it were, why should the bill be confined to malt beverages? Why are the purveyors of "hard liquor" exempt? If it were, why the discrimination against New Jersey licensees who must pay cash whereas customers outside the State may continue to purchase on credit? If over-extension of credit is an evil, why is it not barred all along the line? Why is it not forbidden to wholesalers as well as by wholesalers? Business is normally done on faith and credit. Arbitrary interferences with the natural laws of demand, supply and credit usually do not survive the emergencies for which they were devised and which constitute their only justification.

The bill not only injects governmental regulation into ordinary trade practices, but also imposes mandatory litigation

upon creditors, invents new and unusual effects of court judgments and involves a plethora of administrative work to be paid for by the Government in order to bury the mistakes of a credit man.

Existing provisions are adequate to eliminate the tied house. Brewery and wholesaler control over retail outlets has largely been curbed. The best way to cope with that problem is by frontal attack and not by remote indirection as a possible consequence of a bill, the real purpose of which is to insure payment of current sales and collection of past due accounts.

I therefore advise against the enactment of the bill.

Respectfully submitted,
D. FREDERICK BURNETT,
Commissioner.

10. NOTICE - RETAIL LICENSES EXPIRING JUNE 30, 1939 - INSTRUCTIONS.

May 1, 1939

All licenses, except Seasonal Retail Consumption licenses, will expire at midnight, June 30, 1939. Licensees must obtain new licenses on or before that date in order to continue business without interruption.

Applications should be filed promptly. A day's delay may mean that some licensee will have to close up shop.

A licensee who seeks to renew must comply with all requirements pertaining to his original application. Accordingly, he must (1) file a new application accompanied by the full annual license fee for the period from July 1, 1939 to July 1, 1940 and satisfactory evidence that a new Federal tax stamp has been paid for and is being obtained, and (2) publish a notice of application once a week for two weeks successively, in a qualified newspaper. But this is only the mechanical part of the procedure. In addition, investigation must be made by the license issuing authorities and hearing held, if necessary. This will require time.

The prescribed form of application for PLENARY RETAIL CONSUMPTION, PLENARY RETAIL DISTRIBUTION, LIMITED RETAIL DISTRIBUTION and SEASONAL RETAIL CONSUMPTION LICENSE is in Bulletin 237, Item 2. The prescribed form of application for CLUB LICENSE is in Bulletin 237, Item 3. There has been no change, this year, in the application forms.

The prescribed forms for license certificates are in Bulletin 237, Items 4 through 8, which also are the same as for last year, the only revision necessary being to change the expiration date in the Plenary Retail Consumption, Plenary Retail Distribution, Limited Retail Distribution and Club Licenses from June 30, 1939 to June 30, 1940.

Note particularly that applications must be filed at or before the first insertion of the advertisement and that a hearing is to be set when an objection is filed, without the necessity of any request therefor by the applicant. Regulations No. 2, Pamphlet Rules, page 34.

All permits for the EMPLOYMENT BY LICENSEES OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP likewise

expire on June 30, 1939, and if employment is to be continued, must be renewed. Application forms may be obtained from, and are returned to, the State Commissioner. The employment after June 30th, of disqualified persons, without permit, is cause for revocation of the license. Regulations No. 11, Pamphlet Rules, page 52.

Concurrently, on June 30th, all transportation insignia also expire. New transportation insignia must be obtained by all licensees (including Seasonal Retail Consumption licensees) before any alcoholic beverages may be transported. Regulations No. 16, Pamphlet Rules, page 58. No insignia will be issued until the issuance of the license has been certified to the State Commissioner. Application forms for Transportation Insignia, Form NJABC 102, will be forwarded to all issuing authorities shortly.

Applicants must carefully follow the instructions for filing which appear in each application.

Licensees who fail to obtain new licenses on or prior to June 30, 1939 will not be permitted to operate until all legal requisites have been completed and licenses actually issued.

THE LAW WILL BE ENFORCED.

D. FREDERICK BURNETT,
Commissioner.

11. LICENSES - REFUND OR SURRENDER - COMPUTATION.

April 30, 1939

John Schuster, Jr.,
City Clerk,
Egg Harbor City, N. J.

Dear Mr. Schuster:

I have yours of the 24th re surrender of license by Mr. Hugo Rossbach.

Our records disclose that Plenary Retail Consumption License C-6 for the present fiscal year was issued to Rossbach on July 1, 1938, and your letter states that he voluntarily surrendered his license on the date of your letter, April 24th.

The trouble with your calculation is that you have forgotten to deduct the surrender fee of 50% of the license fee originally paid.

Let us work it out together. The fee Mr. Rossbach actually paid was \$200.00. Therefore, the surrender fee would be 50% of that, or \$100.00. Now, in respect to a license which was surrendered on April 24th, the prorated unearned fee down to June 30th would be \$37.26. The law says that, from this last mentioned amount, you are to deduct the surrender fee. But you can't subtract \$100.00 from \$37.26 without getting a minus quantity. Legally that means no ~~surrender~~ ^{refund} fee whatsoever is payable.

*Review
Plan
226
3/31/49*

That is the legal result whenever the subtraction comes to a minus quantity.

You always get a minus quantity whenever the surrender fee is greater than the unearned fee.

Let's try it again from a more general angle: Suppose a license has run just half of the term for which it was issued. Then the surrender fee would be just equal to the amount of the unearned fee. Subtracting one from the other would leave zero as the amount of the refund.

It follows that, if a license has been effective for more than half of its term, the surrender fee will necessarily be greater than the unearned fee and hence a minus quantity is produced by the subtraction. Hence, no refund.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYMENT OF FEMALE BARTENDERS.

In the Matter of Disciplinary Proceedings against
PETER FABIANO,
96 Orange St.,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-610, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
- - - - -)

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Klein & Klein, Esqs., by Nathaniel J. Klein, Esq., Attorneys for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge of employing a female to tend bar and sell and serve liquor at his tavern, contrary to resolution of August 27, 1934 of the Newark Board of Alcoholic Beverage Control (adopted by that Board at a time when it, instead of the municipal governing body as now, had power to regulate the conduct of retail liquor places in the municipality).

The defendant frankly admits that, in the early morning hours of Sunday, March 5, 1939, Inspector MacIntosh and Investigator Thievon of this Department observed the defendant's wife serve drinks over the bar, and that she, in assistance to him, had been tending bar on Saturday nights for seven or eight months previously.

The defendant's attorney testified that on March 16, 1939 he appeared before the Newark Board of Alcoholic Beverage Control; that in "a general discussion with the Board it was agreed that the original intention of the prevailing resolution pertaining to..... female bartenders was not to cover a situation.....where wives of licensees were tending bar"; that "it was agreed that the resolution should be corrected"; that Commissioners O'Loughlin and Wagman of the Board "readily agreed to submit a remedial resolution to the Board of Commissioners of the City of Newark", but the matter was tabled upon the request of Commissioner Wiedenmayer "who asked for more time to look into the situation."

But no such "remedial resolution" has been enacted.

As to the meaning of the resolution of August 27, 1934, it has already been settled that that resolution, in prohibiting females from tending a bar or selling or serving liquor at a tavern, is an outright prohibition without exception and hence includes the wife of a tavern-keeper even though she be assisting her husband without pay. Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1. The effect of the language in the resolution being clear, I am not at liberty to speculate on the possibility of a change in it. Decisions are not to be made on conjectural possibilities. DeLuca v. Fairview, Bulletin 279, Item 12. The change, even should it occur, can apply only to the future and will not wipe out a violation already committed.

The defendant's license will be suspended for five (5) days.

Accordingly, it is, on this 30th day of April, 1939, ORDERED that Plenary Retail Consumption License C-610, heretofore issued to Peter Fabiano, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing May 4, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SECOND OFFENDER - SUSPENSION TO END OF THE TERM.

In the Matter of Disciplinary)
Proceedings against)

JULIUS HAINO,)
20 Hermon St.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-658, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

-----)
Charles Basile, Esq., Attorney for the State Department of)
Alcoholic Beverage Control.)
Herman Cooper, Esq., Attorney for the Defendant-Licensee.)

BY THE COMMISSIONER:

The defendant pleads guilty to the charges (1) of selling and serving liquor at his tavern at 10:00 A.M. on Sunday, March 19, 1939, (2) of permitting his tavern to be open at that hour, and (3) of failing to provide a free view from the street into the interior of his tavern at that hour, all in violation of Newark Ordinance #3930 (which forbids liquor to be sold or served or taverns to be open between 3:00 A.M. and noon on Sundays, and further requires a free view from the street into the interior of licensed premises between those hours).

Between 9:30 and 10:00 o'clock on the Sunday morning in question, Investigators Wagi and Joret of this Department and

Sergeant McGowan and Detective Friedman of the Newark Police Department, went to the defendant's tavern to investigate a complaint. They observed that no view was possible from the street into the interior. Wagi entered the premises and, on seeing a light in the cellar, descended and there found the defendant and another man (who was delivering ice). The investigator, upon inquiry as to what he wanted, told the defendant that he would like to have a drink. The defendant brought Wagi upstairs but hesitated about selling him any liquor, saying that "it was rather dangerous to do so on a Sunday morning" and that "perhaps Wagi was a prohibition agent." Wagi replied that the defendant, if he thought so, should not make the sale. The defendant, apparently swallowing his fears and scruples, sold and served hard liquor and beer to the investigator, and also sold him a pint bottle of whiskey. The police officers then gained entry into the premises and arrested the defendant for violating the ordinance. He was later convicted and fined \$50.00 in Newark Police Court for such violation.

The defendant has a record. On December 12, 1938, he was convicted in a criminal court in this State for selling liquor to a minor (a 17-year old girl), whereupon his license was automatically suspended. Thereafter he was found guilty in a disciplinary proceeding before this Department for such sale to the minor (in violation of statute and State regulation), of employing that minor at the tavern (in violation of statute), and of employing a female (his wife) to tend bar and sell and serve liquor and another female (the 17-year old girl) to serve liquor (contrary to Newark regulation). Thereupon, despite his petition, I refused to lift the automatic suspension until forty days after the license had actually been picked up. Re Haino, Bulletin 295, Item 7.

The defendant apparently has failed to learn his lesson. If I had thought that he would continue to be a violator, I would not have lifted the suspension. To insure respect for the law, his license will now be suspended for the balance of its term.

Accordingly, it is, on this 30th day of April, 1939, ORDERED that Plenary Retail Consumption License C-658, heretofore issued to Julius Haino by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the balance of its term, effective May 4, 1939, at 3:00 A.M. (Daylight Saving Time).

L. J. Theobald

Commissioner.